

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ALFRED CALVIN WHITEHEAD,)	
)	
Plaintiff,)	
)	
)	
vs.)	CASE NO. 3:10-1098
)	JUDGE CAMPBELL/KNOWLES
)	
)	
CORRECTIONS CORPORATION OF)	
AMERICA, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

This matter is before the Court upon an “Amendment to a Complaint” that has been filed by the pro se Plaintiff. Docket No. 44. Plaintiff filed the instant document without leave of Court and without the written consent of the opposing parties.

Fed. R. Civ. P. 15 provides in relevant part as follows:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) If the pleading is one to which a responsive pleading is required 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e) or (f), whichever is earlier.


(2) Other Amendments. *In all other cases*, a party may amend its pleading only with the opposing party's written consent or the Court's leave. . . .

(Emphasis added.)

Plaintiff is attempting to amend his Complaint, which is a pleading “to which a responsive pleading is required.” Therefore, Plaintiff can amend as a matter of course only under the circumstances set forth in Rule 15(a)(1)(B). Neither of the provisions of that Rule, however, applies, because no responsive pleading has been served, nor has a Motion under Rule 12(b), (e), or (f) been filed. Thus, Rule 15(a)(2) applies, and Plaintiff may amend his Complaint with the opposing party's written consent or the Court's leave.

Because Plaintiff had neither consent nor leave, his “Amendment to a Complaint” (Docket No. 44) was not properly filed, and it should be STRICKEN.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. Clifton Knowles
United States Magistrate Judge